

Client Alert

OFAC Changes Its Mind on Aggregate SDN Ownership

August 14, 2014

On August 13, 2014, the Office of Foreign Assets Control (OFAC) updated its 2008 guidance regarding how to treat entities potentially owned or controlled by Specially Designated Nationals (SDNs). While the new guidance confirms several longstanding OFAC positions, it also reverses OFAC's recent guidance with respect to how to address the aggregation of SDN ownership interests in an entity.

OFAC's new guidance reaffirms several aspects of long-standing OFAC interpretation, including that all entities that are owned 50 percent or more by an SDN, directly or indirectly, are considered designated by operation of law and must be treated as SDNs subject to the same restrictions as the person by which they are owned.

Importantly, however, the new guidance goes further. Reversing earlier guidance issued in the form of Frequently Asked Questions on the Russia/Ukraine sanctions, OFAC has now extended this guidance to aggregate ownership, indicating that if an entity is 50 percent or more owned "in the aggregate, directly or indirectly ... by one **or more** blocked persons" it is considered to be an SDN.

In a revised set of Frequently Asked Questions issued contemporaneously, OFAC made this point more explicitly: "On August 13, 2014, OFAC indicated in its revised 50 Percent Rule guidance that OFAC's 50 Percent Rule applies to entities owned 50 percent or more in the aggregate by one or more blocked persons. Accordingly, if Blocked Person X owns 25 percent of Entity A, and Blocked Person Y owns another 25 percent of Entity A, Entity A is considered to be blocked." Aggregation applies across sanctions programs.

In its FAQs, OFAC issued several additional clarifications. First, "indirect" ownership for purposes of the 50 Percent Rule means entities that are owned through another entity or entities that are 50 percent or more owned in the aggregate by the blocked persons. OFAC provided five examples to illustrate how this indirect ownership rule works in practice.

Second, OFAC clarified that if SDNs divest their ownership interest in another entity in a transaction entirely outside U.S. jurisdiction such that the SDN ownership is now less than 50 percent, the now-divested entity is no longer considered to be an SDN by operation of law. If the property comes within the United States (or within the control of a U.S. person) before divestment however, it would remain blocked because OFAC does not recognize subsequent unlicensed transfers of blocked property.

Finally, OFAC clarified that its 50 Percent Rule applies only to certain sanctions programs. OFAC expressly identified Cuba and Sudan as having broader definitions of blocked by operation of law.

OFAC provided no transition period, general authorization to unwind involvement in now potentially prohibited transactions, or any guidance regarding how to treat interactions with newly designated entities.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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